

C. DEMONT JUDD, JR.
ATTORNEY AT LAW
2650 WASHINGTON BLVD., SUITE 102
OGDEN, UTAH 84401
821-4015

May 17, 1988

John H. Mabey, Jr.
Assistant Attorney General
1636 West North Temple
Salt Lake City, Utah 84116

RECEIVED

MAY 18 1988

RE: Meadowville Irrigation Rights

ATTORNEY GENERAL
RESOURCE AC

Dear John:

Thank you for your letter of May 11 and the enclosures. I am forwarding to you copies of certain documents which I have which I think pertain directly to the problem which presently exists concerning the inappropriate and unlawful diversion of Little Cheney and that which has been designated by the people in place as North Creek.

I have reviewed all of the documentation which you sent to me with my clients and would make the following observation:

The Red Book, which apparently is the result of the November 17, 1969 Findings of Fact and Conclusions of Law, raises many, many questions concerning the finding by Judge Lewis Jones, pursuant to the hearing in Civil 299 located on page 13 of the docket book in the Rich County Clerk's office. I attach herewith a copy of that document and call your attention to the very last sentence, "Reservoir and new land in use by J. N. Cook is illegal."

In the red book at page 480, we find a determination as of February 2, 1958, that as claim number 1616, that storage in an unnamed reservoir with a maximum capacity of 15 acre feet with a total yearly diversion under all claims mentioned 151.32 acre feet. Please note that nothing in the judge's orders after November 15, 1956 ever treated a question of the reservoir and the new land in use.

At no point in any of the Findings and Conclusions entered by the Court in November of 1956 or 1958 is there ever a designation that a reservoir could be built. I attach herewith also a copy of the State Engineer's log book, page 472 and 473, wherein Wayne Criddle, on April 23, 1964, granted application number 28020 which is the same application as claim number 1616. This end run by Criddle around the judge's decision of November 15, 1956 should not be permitted. Certainly no new water was

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created between November 15, 1956 and February 2, 1958.

I am satisfied that the minute entry entered in 1956 would be binding upon the State Engineer in April of 1964.

I note further that on page 473 that the State Engineer protected himself by suggesting that the right evidence by the certificate is subject to review by the courts in any adjudication proceeding. There is nothing in the November 17, 1969 finding and decree which suggests the late priority date.

My clients are finding that their 1873 priority with respect to the Little Cheney spring stream, the Andrew's spring, the Judd/Kimball spring, Jebo creek, Tuft's creek and all of the Meadowville drainage is now being interfered with by a diversion which Judge Lewis Jones suggested was illegal.

In the March 24, 1958 interlocutory Order, the State Engineer was required to formulate a report of his activities and present the same not later than Thursday, November 13, 1958 and the Court suggested that only during 1958 was the Order to Apply until and unless it was amended by the Court.

I do not believe the August, 1967, so called 'decree' for Rich County Division was ever noticed. My clients were not represented and there is nothing in that decree (which resulted in the Red Book) which suggests the interest of the Weston's in Meadowville drainage was ever addressed.

Paragraph three of the Judgment suggests that all of the remaining protest and objections to the Revised Determination of Water Rights are dismissed. The Court gave no opportunity for the Westons to be heard, and in any event, all of the Weston's claims are senior to (by 95 years) the now difficult claim of J.N. Cook in a reservoir.

Please understand that we have no objections to Mr. Cook using any of the water to which he is entitled but we do object to the fact that he had diverted the water, keeps his reservoir full and sprinkles, with the result that the Andrew's Spring and the Judd/Kimball Spring are now drying up. No water is now available to my clients after, approximately, April 15. This year in particular, there is no water at all available to them. Yet they see the day after day the sprinkling of the new property on the part of J. N. Cook.

That which we have said of J. N. Cook is also true of Dell N. Cook. Dell has, without any authorization or any blessing

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from the State Engineer or the Red Book or any other place, translated that which was an irrigation, stock water allocation of water to a sprinkled use and contrary to and inimical to the rights of the Westons. In other words, no water never gets below and recharges the springs or the creek below.

Please be aware of the fact that Tuft creek is a dry creek. Jebo is a fairly good creek, but neither Tuft nor Jebo is recharged by Cheney or by the Judd/Kimball springs. Since the Cooks began to capture the water and utilize it in a different way. Their utilization is much greater now than it was on page 480 of the Red Book which was 50.44 acres.

If some sunny day, you want to meet me I would be happy to meet you in Meadowville and take you to the location of Judd/Kimball Spring and let you see the lay of the land. I do recommend that we do it in the early part of June, if at all possible. Would you call me and let me know and, after which, we can play golf.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. DeMont Judd, Jr.", written in a cursive style.

C. DeMont Judd, Jr.
Attorney at Law

CDJ/mat

This matter came on regularly this 15th Day of November A. D. 1956. Ross M. Pope was sworn and testified and George D. Preston was sworn and testified as witness to the will of C. W. Pope. Order Admitting Will to Probate was granted.

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WILMA CORNIA

CIVIL No. 417

ROGER JACKSON and
ALTON JACKSON

This matter came on regularly for trial this 15th Day of November, A. D. 1956 the Court sitting without a jury. Wilma Cornia being represented in Court by his Attorney Mr. Klipp, and Roger Jackson being present and represented by his Attorney Samuel Corson.

Wilma Cornia was sworn and testified for the plaintiff and was cross examined by Counsel for defendant. Roger Jackson was sworn and testified for defense and was cross examined by Counsel for plaintiff. Morris Clawson was sworn and testified and was cross examined. Matter taken under advisement.

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IN THE MATTER OF THE PROPOSED
TERMINATION OF WATER RIGHTS IN
NORTH RIVER, RICH COUNTY
DRAINAGE AREA

CIVIL No. 299

JOHN WESTON, FRANK WESTON AND
JOSEPH R. WESTON

Petitioners

J. N. COOK, DELL COOK, ETHEL M.
COOK and ELLSWORTH JOHNSON
ESTATE

Defendants

This matter came on regularly for trial this 15th day of November, 1956 the Court sitting without a jury. John Weston, Frank Weston and Joseph R. Weston, Petitioners being present in Court and represented by their counsel Edward Clyde, Esq. and the defendants being present in Court and being represented by their Attorneys. J. N. Cook being present and represented by Milton A. Oman, Esq., Dell Cook being present and being represented by George D. Preston, Esq., and Farrell Johnson being present for Ellsworth Johnson Estate and being represented by Paul D. Thatcher, Esq.

Harold Donaldson, Surveyor for State Engineer's office was sworn and testified. Maps were entered as Exhibit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. Stipulation entered as Exhibit No. 3, Special Use Permit entered as Exhibit No. 4, and Special Use Permit entered as Exhibit No. 5.

Dr. Donaldson was examined by Defense Attorney Milton A. Oman.

The following witnesses were sworn and testified and were cross examined: Mr. Hubert C. Lumbert of the State Engineer's Office; J. N. Cook, Dell Cook, Jean Cook and John Weston.

Petition proven as to first cause. State Engineer to prepare a proposed amendment to Decree providing for use by everyone on pro ratio basis and resubmit to the Court. Parties to have further hearing on second cause. Reservoir and new land in use by J. N. Cook is illegal.

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IN THE MATTER OF THE PROPOSED
TERMINATION OF WATER RIGHTS
NORTH RIVER, RICH COUNTY
DRAINAGE AREA

Civil No. 299

JOHN WESTON, FRANK WESTON AND
JOSEPH R. WESTON

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J. N. COOK, DELL COOK, ETHEL M.
COOK and ELLSWORTH JOHNSON
ESTATE

Civil No. 405

JOHN WESTON, FRANK WESTON AND
JOSEPH R. WESTON

Matter having been taken under advisement, the Court now awards \$10.00 to Plaintiff on final.

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Recorded ^{May 1} May
At 1:00 O'clock P.M.

Certificate of Appropriation of Water
State of Utah

Application No 28020

Certificate No 6749

1. Name and Address of Appropriator:

Joseph W. Gask,

Garden City, Utah

Whereas, it has been made to appear to satisfaction of the undersigned that the Appropriation of water has been perfected under the above numbered application in accordance with the Laws of Utah;

Therefore, Be it known that the Engineer hereby certifies that said Appropriator is entitled to the use of water subject to prior rights, if any, follows:

2. Period and Nature of use:

Irrigation from April 1 to Sept 30

Domestic from to

Stockwatering from to

Municipal from to

Other from to

3. Source of Supply: Little Spring Str.

4. Drainage Area: Bear River

5. Quantity of water: 15.0 acre ft

6. Priority of Right: February 2, 1958

7. Point of Diversion: 5863 ft and
ft from NE Cor. Sec. 18, T13N, R. 5E
Rich County, Utah

8. Method of Diversion: Earth fill dam
16 ft high and 425 ft long

9. Place and Extent of use:

irrigation of 66.52 acres of land described
as follows:

Acres	Legal Subdiv.
17.95	T13N R5E S4BM
6.03	SW 1/4 NW 1/4
27.26	SE 1/4 NW 1/4
23.53	NE 1/4 SW 1/4
10.85	NW 1/4 SW 1/4
5.90	SW 1/4 SW 1/4
	SE 1/4 SW 1/4

66.52 acres total area irrigated.

Other rights appurtenant. Water user
Numbered 743, 745, 854, 855, 856.

798, 1302

The works employed in this appropriation
to be operated and maintained in
such manner and condition as will
prevent waste of water. This Certificate
titles the holder to use only sufficient
water from all rights combined to
constitute an economic duty without
waste.

The right evidenced by this Certificate
is subject to review by the courts in
any adjudication proceeding.

In witness whereof, I have hereunto
my hand and affixed the seal of
my office this 23rd day of April, 1964.

Seal of State
Engineer

Wayne W. Cribble
Wayne W. Cribble
State Engineer

In the event the right evidenced by
this Certificate is transferred, a copy of
transfer should be furnished to the
Engineer by the party acquiring right.